

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**NOTICE OF PROPOSED MODIFICATION TO****CALIFORNIA CODE OF REGULATIONS****TITLE 8: Chapter 4, Subchapter 4, Article 6, Section 1541
of the Construction Safety Orders****Excavations, General Requirements**

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named standards in which modifications are being considered as a result of public comments and/or Board staff consideration.

On July 20, 2006, the Standards Board held a Public Hearing to consider revisions to Title 8, Section 1541 of the Construction Safety Orders. The Standards Board received oral and written comments on the proposed revisions. The standards have been modified as a result of these comments and Board consideration.

A copy of the full text of the standards as originally proposed, and a copy of the pages with the modifications clearly indicated, are attached for your information. In addition, a summary of all oral and written comments regarding the original proposal and staff responses is included.

Pursuant to Government Code Section 11346.8(d), notice is also given of the opportunity to submit comments concerning the addition to the rulemaking file of the following documents incorporated by reference/relied upon:

ADDITIONAL DOCUMENTS RELIED UPON

Senate Bill 1359 Introduced by Senator Torlakson, February 21, 2006, with amendments through August 22, 2006

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board office located at the address listed below.

ADDITIONAL DOUCMENTS INCORPORATED BY REFERENCE

Common Ground Alliance (CGA), Best Practices, Version 3.0, Published March 2006

This document is too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate this document by reference. Copies of this document are available for review during normal business hours at the Standards Board Office located at the address listed below.

Any written comments on these modifications and documents incorporated by reference/relied upon must be received by 5:00 p.m. on October 23, 2006, at the Occupational Safety and Health

Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. The standards will be scheduled for adoption at a future business meeting of the Standards Board.

The Standards Board's rulemaking files on the proposed action are open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Standards Board's office at 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833.

Inquiries concerning the proposed changes may be directed to the Executive Officer, Keith Umemoto, at (916) 274-5721.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date: October 3, 2006

Keith Umemoto, Executive Officer

STANDARDS AS ORIGINALLY PROPOSED

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

**PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4**

Amend Section 1541 to read as follows:

§1541. General Requirements.

(a) Surface encumbrances. All surface encumbrances that are located so as to create a hazard to employees shall be removed or supported, as necessary, to safeguard employees.

(b) Subsurface ~~Underground~~ installations.

(1) The ~~estimated approximate~~ location of ~~utility~~ subsurface installations, such as sewer, telephone, fuel, electric, water lines, or any other subsurface ~~underground~~ installations that reasonably may be expected to be encountered during excavation work, shall be determined by the excavator prior to opening an excavation.

(A) Excavation shall not commence until:

1. The excavation area has been marked as specified in Government Code Section 4216.2 by the excavator; and

2. The excavator has received a positive response from all known owner/operators of subsurface installations within the boundaries of the proposed project confirming that all known installation owner/operators have responded by locating their installations, advising of the location of their installation, or advising that the operator does not operate a subsurface installation that would be affected by the proposed excavation.

(B) When the excavation is proposed within 10 feet of, or in conflict with, a high priority subsurface installation, an onsite meeting involving the excavator and the subsurface installation owner/operator's representative shall be held to determine the action or activities required to verify the location of such installations. High priority subsurface installations are high pressure natural gas pipelines with normal operating pressures greater than 415 kPA gauge (60 p.s.i.g.), petroleum pipelines, pressurized sewage pipelines, high voltage electric supply lines, conductors or cables that have a potential to ground of more than 60,000 volts, or hazardous materials pipelines that are potentially hazardous to employees, or the public, if damaged.

(C) Only qualified persons may perform subsurface installation locating activities in accordance with this section and Government Code Sections 4216 through 4216.9. Persons who complete a training program in accordance with the requirements of Section 1509, Injury and Illness Prevention Program (IIPP), that meets the minimum training guidelines and practices of the Common Ground Alliance (CGA) Best Practices, Version 2.0, published December 2004, or the standards of the National Utility Locating Contractors Association (NULCA), Standard 101: Professional Competence Standards for Locating Technicians, 2001, First Edition, which are incorporated by reference, shall be deemed qualified for the purpose of this section.

(D) Employees shall be trained in the excavator notification and excavation practices required by this section and Government Code Sections 4216 through 4216.9.

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4

Amend Section 1541 to read as follows (continued):

(2) All Regional Notification Centers as defined by Government Code Section 4216(h) in the area involved and all known owners of ~~underground~~ subsurface facilities in the area who are not members of a Notification Center shall be advised of the proposed work at least 2 working days prior to the start of any digging or excavation work. EXCEPTION: Emergency repair work to ~~underground~~ subsurface facilities as defined in Government Code Section 4216(d).

(3) When excavation or boring operations approach the ~~estimated~~ approximate location of ~~underground~~ subsurface installations, the exact location of the installations in conflict shall be determined by safe and acceptable means that will prevent damage to the subsurface installation, as provided by Government Code Section 4216.4.

(4) While the excavation is open, subsurface ~~underground~~ installations shall be protected, supported, or removed as necessary to safeguard employees.

(5) An excavator discovering or causing damages to a subsurface installation shall notify the facility owner/operator or the regional notification center immediately. All breaks, leaks, nicks, dents, gouges, grooves, or other damages to an installation's lines, conduits, coatings or cathodic protection shall be reported.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code; and Section 4216, Government Code.

PROPOSED MODIFICATIONS
(Modifications are indicated in bold,
double underline wording for new language,
and bold, strikeout for deleted language.)

**STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

**PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4**

Amend Section 1541 to read as follows: Amend Section 1540 to read as follows:

§1541. General Requirements.

(a) Surface encumbrances. All surface encumbrances that are located so as to create a hazard to employees shall be removed or supported, as necessary, to safeguard employees.

(b) Subsurface ~~Underground~~ installations.

(1) The ~~estimated~~approximate location of ~~utility~~ subsurface installations, such as sewer, telephone, fuel, electric, water lines, or any other subsurface ~~underground~~ installations that reasonably may be expected to be encountered during excavation work, shall be determined by the excavator prior to opening an excavation.

(A) Excavation shall not commence until:

1. The excavation area has been marked as specified in Government Code Section 4216.2 by the excavator; and

2. The excavator has received a positive response from all known owner/operators of subsurface installations within the boundaries of the proposed project confirming that all known installation owner/operators have responded by locating their installations, advising of the location of their installation, or advising that the operator does not operate a subsurface installation that would be affected by the proposed excavation.

(B) When the excavation is proposed within 10 feet of, ~~or in conflict with,~~ a high priority subsurface installation, **the excavator shall be notified by the facility owner/operator of the existence of the high priority subsurface installation before the legal excavation start date and time in accordance with Government Code Section 4216.2(a), and** an onsite meeting involving the excavator and the subsurface installation owner/operator's representative shall be **scheduled by the excavator and the owner/operator at a mutually agreed on time held** to determine the action or activities required to verify the location of such installations. High priority subsurface installations are high pressure natural gas pipelines with normal operating pressures greater than 415 kPA gauge (60 p.s.i.g), petroleum pipelines, pressurized sewage pipelines, ~~high voltage electric supply lines,~~ conductors or cables that have a potential to ground of more than 60,000 volts, or hazardous materials pipelines that are potentially hazardous to employees, or the public, if damaged.

(C) ~~Only~~Qualified persons ~~may~~ shall perform subsurface installation locating activities in accordance with this section and Government Code Sections 4216 through 4216.9. Persons who complete a training program in accordance with the requirements of Section 1509, Injury and Illness Prevention Program (IIPP), that meets the minimum training guidelines and practices of the Common Ground Alliance (CGA) Best Practices, Version **23.0**, published **December 2004, March 2006**, or the standards of the National Utility Locating Contractors Association (NULCA), Standard 101: Professional Competence Standards for Locating Technicians, 2001, First Edition, which are incorporated by reference, shall be deemed qualified for the purpose of this section.

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4

Amend Section 1541 to read as follows:

(D) Employees **who are involved in the excavation operation and exposed to excavation operation hazards** shall be trained in the excavator notification and excavation practices required by this section and Government Code Sections 4216 through 4216.9.

(2) All Regional Notification Centers as defined by Government Code Section 4216(h) in the area involved and all known owners of ~~underground~~ subsurface facilities in the area who are not members of a Notification Center shall be advised of the proposed work at least 2 working days prior to the start of any digging or excavation work. EXCEPTION: Emergency repair work to ~~underground~~ subsurface facilities as defined in Government Code Section 4216(d).

(3) When excavation or boring operations approach the ~~estimated approximate~~ location of ~~underground~~ subsurface installations, the exact location of the installations ~~in conflict~~ shall be determined by safe and acceptable means that will prevent damage to the subsurface installation, as provided by Government Code Section 4216.4.

(4) While the excavation is open, subsurface ~~underground~~ installations shall be protected, supported, or removed as necessary to safeguard employees.

(5) An excavator discovering or causing damages to a subsurface installation **immediately** shall notify the facility owner/operator or **contact** the regional notification center immediately **to obtain subsurface installation operator contact information**. All breaks, leaks, nicks, dents, gouges, grooves, or other damages to an installation's lines, conduits, coatings or cathodic protection shall be reported **to the subsurface installation operator**. **If the damage results in the escape of any flammable, toxic, or corrosive gas or liquid or endangers life, health or property, the excavator responsible shall immediately notify 911 and the facility owner/operator.**

NOTE: For the purposes of Section 1541(b), the term excavator refers to the excavating contractor and the term facility owner/operator or owner/operator refers to the subsurface installation owner/operator (e.g., utility company).

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code; and Section 4216, Government Code.

SUMMARY AND RESPONSE TO COMMENTS

SUMMARY AND RESPONSE TO WRITTEN AND ORAL COMMENTS

I. Written Comments

Nancy Moorhouse, Director of Safety, Teichert Construction, by letter dated June 23, 2006

Ms. Moorhouse's letter contained 10 separate comments which will be addressed in order below.

Comment #1:

Ms. Moorhouse recommends that for consistency within Section 1541, a definition for "subsurface installation" should be added to Section 1540(b) based on Government Code (GC) Section 4216(j).

Response:

The Board believes the description of subsurface installation included in the language of Section 1541(b)(1) is to give notice of the intent and purpose of the standard and to clearly indicate to the employer what is meant by the term "subsurface installation." Several commentors indicated that the definition in Section 1541(b)(1) is clearer than the Government Code.

Comment #2:

Ms. Moorhouse also recommends that the term high priority subsurface installation be defined in Sections 1540(b) and 1504 and the second sentence in Section 1541(b)(1)(B) be eliminated.

Response:

The Board believes Section 1541(b)(1)(B) is sufficiently clear with regard to indicating to the employer what is meant by the term high priority subsurface installation as it is essentially defined in subsection (B). Therefore, the Board believes no modification of the proposal is necessary.

Comment #3:

Ms. Moorhouse stated that current proposed standard states the responsibility of an onsite meeting involves the excavator and the subsurface installation owner/operator representative. From a field application perspective, she raised the question about the utility company requesting a pre-job as well as the excavator when working in and around these types of facilities?

Response:

The Board believes that whether the owner/operator or excavator initiates the onsite meeting is of less concern than that the meeting occur prior to excavation in proximity to the high priority subsurface installation. This particular proposed standard is not intended to substitute or replace

locating activities that must be performed prior to commencing any excavation operation. However, staff proposes to delineate excavator and owner/operator responsibilities and modify Section 1541(b)(1)(B) to clearly indicate that the onsite meeting shall be scheduled by the excavator and the owner/operator at a mutually agreed to time. Additionally, the proposal would clarify that it is the owner/operator's responsibility to notify the excavator of the existence of high priority subsurface installations prior to commencing the excavation (legal excavation start date).

Comment #4:

Ms. Moorhouse stated a definition for qualified persons as used in Section 1541(b)(1)(C) requires additional training/certifications. She indicated that the concept of qualified persons may be better served if listed as a separate definition under Section 1540(b).

Response:

The Board believes a person who may not be aware of the definitions elsewhere in Title 8 may find the standard difficult to understand if the relevant qualifications as currently stated are located or relocated to another section. Consequently, the Board believes no modification of the proposal with regard to this issue is necessary.

Comment #5:

Ms. Moorhouse recommended updating the proposed reference to the CGA Best Practices, Version 2.0, published December 2004, to the CGA Best Practices, Version 3.0, published March 2006, as referenced in Section 1541(b)(1)(C).

Response:

The CGA Best Practices, Version 3.0 represents the latest state-of-the-art in excavation practices designed to protect workers and the public from catastrophic accidents and damage to subsurface installations while safeguarding the public and the subsurface installation infrastructure critical to everyday life. It is at least if not more effective than version 2.0 and the Board therefore agrees with Ms. Moorhouse that it should replace the current proposed reference in subsection (C). The Board has modified the proposal accordingly.

Comment #6:

Ms. Moorhouse stated that the proposed standard in Section 1541(b)(1)(D), which requires employees be trained in the excavator notification and excavation practices required by Section 1541 and applicable portions of the GC, is ambiguous and could be interpreted to mean all employees (administrative, management, field operations people and employer subcontractors) must be trained and instructed, not just those directly involved in the excavation job. Ms. Moorhouse suggests a clearer definition of employees, such as employer's field employees who have responsibility for excavations, to reduce potential confusion.

Response:

The Board recognizes that existing CSO, Section 1509 (IIPP) and GISO, Section 3203, (IIPP) would apply to Section 1541 to the extent that all employees who are exposed to the hazards of excavation operations be trained and instructed. However, consistent with the intent of existing IIPP standards, the Board staff proposes to modify subsection (D) as suggested by Ms. Moorhouse to clearly indicate to the employer that it is employees who are directly involved in the excavation operation and are exposed to the hazards of excavation operations that are to be trained as required in subsection (D).

Comment #7:

Ms. Moorhouse stated that the Board may want the Division of Occupational Safety and Health (Division) staff to consider adding a new appendix to the standards specifically addressing the items outlined in (A), (B), (C) and (D). Ms. Moorhouse stated that she believes it follows the layout of Section 1541 in which additional appendices contain details about various aspects of excavation operations (e.g., requirements for protective systems and soils classifications).

Response:

The Board notes that the appendices to Section 1541.1 detail permissible slopes, as well as applications for timber and aluminum hydraulic shoring systems, that may be used for protection of workers in excavations. Presently, there are no appendices to Section 1541. Board staff does not believe that there is any necessity for appendices to further explain or provide examples relevant to the referenced proposed subsections in Section 1541. Therefore, the Board believes no modification is necessary.

Comment #8:

Ms. Moorhouse stated that there are many underground facility owners who are not members of a Regional Notification Center (RNC). Given the proposed language in Sections 1541(b)(1)(A), (B) and (C), how would the regulated community know who are not members? Ms. Moorhouse stated she believes there needs to be discussion of methods to resolve how employers are to notify non-members.

Response:

The Board would like to emphasize that current statute as contained in GC Section 4216.1, specifically requires all operators of subsurface installations to be members of a RNC, participate in, and share in the costs of a RNC, with one exception: the California Department of Transportation (CalTrans). Therefore, in response to Ms. Moorhouse's question, given the CalTrans exception, the employer should assume that everyone else who is not in violation of GC Section 4216.1 is a member of a RNC; either the South Shore Utility Coordinating Council or the Underground Service Alert (USA-Northern California or USA-Southern California).

Comment #9:

Ms. Moorhouse stated that with the addition of the term “boring” to the definition in Section 1541(b)(3), amendment of the Tunnel Safety Orders, Section 8408 should be considered so there is consistency between the proposed standards and the safety requirements within boring operations which are classified as a tunnel.

Response:

The Board believes there may be some merit to the suggestion that tunneling operations in the way of subsurface installations should conform with the locating requirements specified in Section 1541, or have equal provisions incorporated in the Tunnel Safety Orders (TSO). Unfortunately, the Board notes that substantive proposed amendment of the TSO is outside the scope of this proposed rulemaking as noticed to the regulated public and would have to be considered in a separate rulemaking project. The Board staff will consider any necessary amendments to the TSO following adoption by the Board and approval by the Office of Administrative Law of the proposed amendments to Section 1541.

Comment #10:

Ms. Moorhouse stated that with regard to Section 1541(b)(5), the first sentence states that an excavator who causes or observes damage done to an underground facility shall notify the facility owner/operator or the RNC immediately. Additional language should be considered if high priority subsurface installations are damaged and the operator cannot be contacted, the excavator shall call 911 emergency services.

Response:

The Board agrees with Ms. Moorhouse to the extent that the proposal needs to be crystal clear as to the importance of the excavator contacting both (emphasis added) the facility owner/operator and 911 emergency services in the event of damage to a subsurface underground installation that could result in a catastrophic release of toxic, flammable, corrosive gas or liquid that endangers the life and health of workers and/or the public. The Board staff proposes to modify subsection (b)(5) to require that any excavator discovering or causing damage to a subsurface installation notify the owner/operator or contact the RNC to immediately obtain the subsurface installation operator contact information. In addition, staff proposes to modify the proposal further to state that if the damage, regardless of whether it is a high priority subsurface installation or not, is catastrophic in nature, both the owner/operator and 911 emergency services are to be immediately contacted.

The Board thanks Ms. Moorhouse for her comments and participation in the Board’s rulemaking process.

Mr. Christopher Lee, Acting Regional Administrator, Region IX, U.S. Department of Labor, Occupational Safety and Health Administration, by letter dated July 10, 2006

Comment:

Mr. Lee stated that federal OSHA has completed their review of the proposed amendments to Title 8, Section 1541 and determined that the proposed amendments require additional levels of protection not found in the federal standards. Federal OSHA concludes that the proposal provides protection at least as effective, if not more effective than, the comparable federal standards.

Response:

The Board thanks Mr. Lee for his participation and support of the proposed amendments.

Mr. Marshall Johnson, AT&T and Ms. Tara Haas, Engineering and Utility Contractors Association (EUCA), California Regional Common Ground Alliance (CGA) Co-Chairs, by letter dated July 21, 2006

Comment:

Mr. Johnson and Ms. Haas suggested amending Section 1541(b)(1)(B) to clarify that the onsite meeting is to be scheduled by the excavator and the facility owner/operator at a mutually agreed to time. Mr. Johnson and Ms. Haas stated this is necessary to ensure clear direction on the procedures needed to have each entity understand and fulfill his/her responsibility in scheduling the meeting.

Response:

The Board agrees and the proposal has been modified as suggested by the commenters to address the scheduling of the onsite meeting by the excavator and facility owner/operator at a mutually agreed on time.

Comment:

Mr. Johnson and Ms. Haas also stated that the proposed language in Section 1541(b)(1)(B) is not clear with regard to the facility owner/operator communicating prior to the start date, to the excavator the legal excavation start date when the excavation is within 10 feet of high priority subsurface installations. If the information from the owner/operator is not communicated to the excavator before digging begins, the onsite meeting required by the proposal might not be scheduled until the excavator arrived onsite at the start of the project. Mr. Johnson and Ms. Haas suggest the proposal be modified to include language to the effect that the excavator shall be notified by the legal excavation start date and time, as defined in GC Section 4216[.2](a)[2].

Response:

The Board agrees and the proposal has been modified to state that notification shall be made to the excavator by the facility owner of the existence of the high priority subsurface installation by the legal excavation start date and time in accordance with GC Section 4216.2(a). The Board notes that the phrase “legal excavation start date” refers to at least two working days, but not more than 14 calendar days in GC Section 4216.2(a)(2) as amended by SB 1359.

Comment:

Mr. Johnson and Ms. Haas suggest modifying Section 1541(b)(1)(C) to resolve the apparent conflict in terms between SB 1359 which requires that qualified person “shall” perform line-locating activities and the proposal which uses the phrase “Only qualified persons “may” perform...”

Response:

The Board is in complete agreement with the commenters and the Board staff has modified the proposed language to eliminate the conflict between “may” and “shall” by having the proposal read: “Qualified persons shall...”

Comment:

Mr. Johnson and Ms. Haas stated that the term “in conflict” used in Section 1541(b)(1)(D)(3) should be deleted as unnecessary. In this way it will be clear to the employer that when the excavation is within the “approximate location” of a subsurface installation, the subsurface installation shall be exposed to determine its exact location.

Response:

The Board notes that the commenters suggested modification would render the proposed language consistent with similar language addressing the determination of the location of subsurface installations contained in GC Section 4216.4(a) and that this is both logical and reasonable. The Board reasons that if an excavation is within 10 feet of a subsurface installation, it is going to be in conflict with it, therefore the phrase “in conflict” appears to be redundant and unnecessary. For this reason, the Board believes this phrase should be deleted from Section 1541(b)(1)(B) where it is also used. The Board staff has modified the proposal as suggested by the commenters, deleting the phrase “in conflict” from Section 1541(b)(1)(D)(3) and for consistency from Section 1541(b)(1)(B).

Comment:

Mr. Johnson and Ms. Haas stated that RNC’s are not obligated to inform facility owners of reported damages from excavators. Therefore, permitting the option to contact the facility owner or the RNC should not appear in Section 1541(b)(1)(D)(5). The commenters stated that the RNC will provide the excavator with contact information of the damaged facility owner.

Consequently, Section 1541(b)(1)(D) should be modified to add the word “contact” in the first sentence to clarify that the excavator needs to contact the facility owner/operator to report damages or the RNC to get facility owner/operator information. The commenters further recommend subsection (D)(5) be modified to state that if high priority subsurface installations are damaged and the operator cannot be contacted, the excavator shall call 911 emergency services.

Response:

The Board agrees with the commenters to the extent that further clarification of subsection (D)(5) is necessary to require the excavator to contact the RNC if the necessary facility owner/operator contact information is not readily available. Additionally, the Board believes that if a subsurface installation is damaged and a catastrophic release ensues which could expose workers, the public, and property to injury or damage, the excavator must contact both the facility owner/operator and 911 emergency services. The Board believes this should be done regardless of whether the installation is high priority or not. The Board staff has identified language contained in the CGA Best Practices Version 3.0, Chapter 5-25 that addresses this issue and has modified the proposal as suggested by the commenters to add the word “contact” and language requiring both facility operator and 911 emergency services to be contacted in the event of a catastrophic damage and release.

The Board wishes to thank Mr. Johnson, Ms. Haas and the Regional CGA for their comments and participation in the Board’s rulemaking process.

II. Oral Comments

Oral comments received at the July 20, 2006, Public Hearing in San Diego, California.

Mr. Larry Pena, Manager of Corporate Safety Policy and Regulations, representing Southern California Edison

Comment:

Mr. Pena stated the proposed language in Section 1541(b)(2)(B) should be modified to eliminate confusion. Mr. Pena referred to proposed language that states “...high voltage electric supply lines...” in the second sentence. This phrase in conjunction with the one that follows it which reads, “...conductors or cables that have a potential to ground of more than 60,000 volts...” might be interpreted to mean that to include high voltage safety or supply lines would be inclusive of voltages greater than 600 volts which is totally contradictory to the intent of the proposal which is to qualify only conductors carrying voltages greater than 60,000 volts as being a high priority subsurface installation. Mr. Pena suggested either deleting the phrase “...high voltage electric supply lines...” altogether or delete the comma between that phrase and the one that follows it for clarity.

Mr. Pena also stated that his office has been in contact with Senator Torlakson's to propose a similar modification to SB 1359.

Response:

The Board agrees with Mr. Pena and has modified the proposal to delete the phrase "...high voltage electric supply lines..." so that the employer will understand that it is conductors or cables conveying voltages greater than 60,000 volts that are considered to be high risk subsurface installations and not voltages below that. Board staff will communicate this proposed modification as well as the other modifications with Senator Torlakson, the author of SB 1359.

Dialogue between Ms. Tara Haas, Director of Government Relations, Engineering Utility Contractors Association (EUCA), Co-Chair of the California Common Ground Alliance (CGA), and Dr. Jonathan Frisch, Occupational Safety and Health (OSHSB) Board member

Comment:

Ms. Haas stated that EUCA and the CGA have reviewed the proposed language and suggest a number of modifications pertaining to: Section 1541(b)(1)(B) regarding the role of the parties who are to hold an onsite meeting when high risk utilities are in proximity to the planned excavation: (1) deleting of "in conflict with" as redundant and unnecessary given the proposed high priority installation 10 foot threshold that triggers the need for the onsite meeting between the excavator and facility owner/operator, (2) clarifying when the meeting is to be scheduled, (3) using the permissive language with regard to clarifying that only the qualified person "shall" rather than "may conduct line locating activities, and (4) modifying Section 1541(b)(1)(D)(5) to clarify that the excavator observing or causing damage to subsurface installations shall either contact the facility owner or contact the RNC to get the contact information and make contact with the facility owner. Ms. Haas also stated that if the excavator is not able to get the operators contact information from the RNC, the excavator should contact 911 emergency services, especially if a high priority subsurface installation is damaged. The CGA proposed language to address these issues.

Dr. Frisch expressed concern over Ms. Haas' suggested modification to subsection (D)(5) and asked Ms. Haas if the CGA intended that if an excavator damaged a line and contacts the operator, the excavator is absolved of having to contact 911 emergency services. Ms. Haas responded that it was not the intent of the CGA to allow the excavator to forgo calling 911 emergency services if contact with the facility owner is made first. Dr. Frisch requested Board staff to work with the CGA to address this concern (clarify the proposed language) and eliminate any misunderstanding.

Response:

See the response to Ms. Haas' written comment letter dated July 17, 2006, and received by the Board at the Public Hearing on July 20, 2006.

The Board notes that staff and CGA have discussed Board member Frisch's concern as described above and proposes to modify the proposal to clarify the excavator's responsibility to contact the owner/operator and (emphasis added) 911 emergency services if the damage that is caused or observed results in the escape of any flammable, toxic, or corrosive gas or liquid or endangers life, health or property. The Board notes that staff's proposed modified language is verbatim of language contained in Chapter 5-25, of the CGA Best Practices, Version 3.0, March 2006.

The Board thanks Ms. Haas for her comment and participation in the Board's rulemaking process.

Mr. John Vocke, Attorney, Pacific Gas and Electric Company (PG&E)

Comment:

Mr. Vocke stated that Board and Division staffs have done a very fine job of drafting the proposal. He expressed support of comments made by Mr. Pena and Ms. Haas.

Response:

See the response to Ms. Haas' written comment letter dated July 17, 2006, and the response to Mr. Pena's oral comment at the July 20, 2006, Public Hearing in San Diego, California. The Board thanks Mr. Vocke for his comment and participation in the Board's rulemaking process.

Ms. Elizabeth Treanor, Director of the Phylmar Regulatory Roundtable

Comment:

Ms. Treanor stated that she is in support of the comments made by Southern California Edison and PG&E.

Response:

See the response to Ms. Haas' written comment letter dated July 17, 2006 and the response to Mr. Pena's oral comment at the July 20, 2006, Public Hearing in San Diego, California.

The Board thanks Ms. Treanor for her comment and participation in the Board's rulemaking process.

Dialogue between Mr. Don Heyer, Operations Manager of Underground Service Alert (USA) of Northern California and Nevada, and Dr. Jonathan Frisch, Board member

Comment:

Mr. Heyer expressed strong support of the comments made by Southern California Edison and the CGA. Dr. Frisch asked Mr. Heyer if all facility owner/operators are members of USA.

Response:

The Board notes that in accordance with GC Section 4216, with the exception of the California Department of Transportation, all owner/operators of subsurface installations are required to be members of a RNC (i.e., USA North or South).

See the response to Ms. Haas' written comment letter dated July 17, 2006, and the response to Mr. Pena's oral comment at the July 20, 2006, Public Hearing in San Diego, California.

The Board thanks Mr. Heyer for his comment and participation in the Board's rulemaking process.

Mr. Emmett Cooper, Pipeline Safety Engineer, State of California Department of Forestry and Fire Prevention (CDFFP), Office of the State Fire Marshal, Pipeline Safety Division

Comment:

Mr. Cooper stated the CDFFP is aware of the Walnut Creek explosion and welcomes anything that can be done to prevent such an incident from ever happening again. He stated the Pipeline Safety Division uses Code of Federal Regulations (CFR) 49 part 195 for liquid petroleum. Contained within that standard is a requirement that the owner/operator shall be present during and after excavation to ensure the integrity of the pipeline. Mr. Cooper stated that such a requirement might be helpful as a modification to the Board staff's proposed language.

Response:

The Board staff's proposal addresses more than just petroleum pipelines which are exclusively regulated by standards contained in CFR 49 part 195 and enforced in California by the CDFFP. The Board believes that the issue of oversight by excavators and facility owner/operators is adequately addressed by proposed language requiring pre-meetings between the excavator and owner/operator when the planned excavation is in proximity to a high priority subsurface installation. Additional proposed language to assure the integrity of the pipeline is maintained is adequately addressed by the proposed language pertaining to the responsibility of excavators who cause or observe damage to any subsurface installation, including a petroleum line. The Board also notes that the CDFFP currently enforces provision of the CFR 49 to ensure that the owner/operator is present before and after excavation of petroleum pipelines. It would seem to be redundant, and unnecessary to have enforcement personnel from two different state agencies onsite to enforce the same provision.

The Board believes the proposed standards, GC 4216 as amended by SB 1359 and CFR 49 Part 195 together will be an even more effective deterrent against subsurface installation damage than what is currently provided by existing law, thereby greatly reducing the potential for catastrophic contact, explosion, fires or hazardous materials releases.

The Board believes no further modification of the proposed language as suggested by Mr. Cooper is necessary. The Board thanks Mr. Cooper and the CDFFP for its comment and participation in the rulemaking process.

Mr. Terry Thedell, Health and Safety Advisor, Sempra Energy Utilities (aka San Diego Gas and Electric)

Comment:

Mr. Thedell stated he supports the comments by PG&E and the CGA.

Response:

See the response to Ms. Haas' written comment letter dated July 17, 2006, and the response to Mr. Pena's oral comment at the July 20, 2006, Public Hearing in San Diego, California.

The Board thanks Mr. Thedell for his comment and participation in the Board's rulemaking process.